

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Phil Weitzman	Team: Team # 5	CCRB Case #: 200501527	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/10/2005 11:30 PM	Location of Incident: corner of Blake Avenue and Georgia Avenue	Precinct: 75	18 Mo. SOL 8/10/2006	EO SOL 8/10/2006	
Date/Time CV Reported Fri, 02/11/2005 1:54 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/11/2005 1:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Cruz	31729	930486	PSA 2
2. POM Edward Babington	26316	932283	PSA 2
3. POM Edwin McBride	22414	931319	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Carlos Cruz	Abuse: Officer Carlos Cruz stopped and questioned § 87(2)(b) and § 87(2)(b)	
B.POM Edward Babington	Abuse: Officer Edward Babington stopped and questioned § 87(2)(b) and § 87(2)(b)	
C.POM Edwin McBride	Abuse: Officer Edwin McBride stopped and questioned § 87(2)(b) and § 87(2)(b)	
D.POM Edward Babington	Abuse: Officer Edward Babington frisked § 87(2)(b)	
E.POM Edward Babington	Abuse: Officer Edward Babington searched § 87(2)(b)	
F.POM Carlos Cruz	Abuse: Officer Carlos Cruz frisked § 87(2)(b)	
G.POM Carlos Cruz	Abuse: Officer Carlos Cruz threatened to arrest § 87(2)(b)	
H.POM Carlos Cruz	Abuse: Officer Carlos Cruz issued a summons to § 87(2)(b)	
I.POM Carlos Cruz	Abuse: Officer Carlos Cruz threatened to damage/seize § 87(2)(b) property.	

## Synopsis

§ 87(2)(b) called-in a complaint to the CCRB on 2/11/2005 (enc. 7A-B) on behalf of her then § 87(2)(b) -year old son § 87(2)(b) and her then § 87(2)(b) -year-old son § 87(2)(b). The brothers' complaint arose from the following series of events: On 2/10/2005 at approximately 11:30 PM, they visited their friend § 87(2)(b) in § 87(2)(b) in Brooklyn, a New York City Housing Authority building. As they walked from the stairwell into the lobby in order to exit, they saw **Officer Carlos Cruz, Officer Edward Babington and Officer Edwin McBride** entering the building. The officers stopped the brothers (allegations A through C), during which time Officer Babington allegedly frisked and searched § 87(2)(b) pockets (allegations D and E), while Officer Cruz allegedly frisked § 87(2)(b) (allegation F). Officer Babington went upstairs to § 87(2)(b) apartment and verified the brothers' story, at which time Officer Cruz held on to § 87(2)(b)'s ID in order to write a UF250. The brothers protested that Officer Cruz was not allowed to write down their information; according to § 87(2)(b) Officer Cruz responded by saying to § 87(2)(b) that he could be arrested for trespassing, and that he could be arrested for refusing to provide his information (allegation G). The brothers alleged that, as they left the building lobby, § 87(2)(b) stated, "Suck my dick," prompting Officer Cruz to issue him a summons for Disorderly Conduct (allegation H). As Officer Cruz wrote the summons, § 87(2)(b) took out his cell phone in order to photograph Officer Cruz's badge, allegedly prompting Officer Cruz to threaten to break the phone (allegation I.)

§ 87(2)(b) accepted mediation and the case was referred to the CCRB's Mediation Unit on 5/13/2005. However, Officer Cruz rejected mediation and the case was subsequently returned to investigation on 7/29/2005.

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) provided a brief phone statement to the CCRB on 2/18/2005 along with § 87(2)(b) (enc. 7C), and was interviewed at the CCRB on 2/22/2005 (9A-D). § 87(2)(g)

On 2/10/2005 near midnight, § 87(2)(b) and § 87(2)(b) dropped off some food for their friend Antone Steponi, who was staying on the fourth floor of § 87(2)(b) with a friend named "§ 87(2)(b)". § 87(2)(b) needed food, but had a curfew and could not go out to get food himself. The brothers (with their mother § 87(2)(b)) live within walking distance of § 87(2)(b) and their mother had asked them to deliver the food.

As the brothers came from the stairwell to the building lobby in order to leave, they saw **Officer Carlos Cruz, Officer Edward Babington and Officer Edwin McBride** entering the lobby. § 87(2)(b) described Officer Cruz as a short white male, Officer Babington as a tall white male and Officer McBride as a black male. Officer Babington asked § 87(2)(b) for his ID, but § 87(2)(b) was not carrying his ID that day and could not provide it. Officer Cruz asked § 87(2)(b) for his ID, and § 87(2)(b) provided it. Officer Cruz then began questioning § 87(2)(b).

Officer Babington told § 87(2)(b) to put his hands up, and then patted his pockets. § 87(2)(b) was wearing a grey hoodie and a big Carhart jacket with a hood. He had a lighter in his right pants pocket, keys and a pack of cigarettes in his left pant pockets, nothing in his back pant pockets, and papers and tissues in his jacket pockets. Officer Babington reached into § 87(2)(b)'s right hoodie pocket briefly, and all of his pants pockets. Officer Babington also told § 87(2)(b) to unzip his jacket, searched the jacket, and looked inside § 87(2)(b)'s hoodie hood. § 87(2)(b) did not see what happened between § 87(2)(b) and Officer Cruz at this time.

Officer Babington asked the brothers what apartment they had been visiting, and then went upstairs to verify their story. The brothers could only remember the apartment location, not the exact number, and asked to accompany Officer Babington to be sure he went to the right place, but, in spite of their arguments, Officer Babington insisted on going by himself.

Officer Babington came back down, asked § 87(2)(b) for his name, and then said, “OK” and shook his head, implying that he had confirmed their story.

Officer Cruz then took out a book and started writing down information from § 87(2)(b)'s ID. § 87(2)(b) asked what he was doing, and Officer Cruz replied that it was a “2-[something]” and that he was writing the information down for future reference. § 87(2)(b) became upset and argued with Officer Cruz, during which time Officer Cruz told § 87(2)(b) “We could arrest you for trespassing,” and “You could spend the night in jail if you don’t want to give us your information.” § 87(2)(b) provided his information to Officer Babington while § 87(2)(b) continued arguing with Officer Cruz.

During the whole time in the lobby, Officer McBride stood back and observed without participating.

Officer Cruz said, “Y’all have a nice day,” and § 87(2)(b) replied, “No, I’m not having a nice day. You messed up my day.” As the brothers left and the officers prepared to enter the building elevator, § 87(2)(b) said, “Suck my dick.” § 87(2)(b) did not say anything to the officers at this point. When the brothers reached the middle of the street, Officer Cruz came running out of the building and yelled for them to come back. The brothers froze, and when Officer Cruz reached them, he said to § 87(2)(b) “Now I’m giving you a ticket for Disorderly Conduct, for saying, ‘Suck my dick.’” § 87(2)(b) said, “You’re going to give him a ticket for cursing? Now I’m going to start cursing,” and cursed at Officer Cruz, using the word, “Fuck.” § 87(2)(b) felt that the officers had been doing something wrong, and that he and § 87(2)(b) were allowed to vent their feelings by cursing. This was the only time during the incident when § 87(2)(b) cursed at the officers.

Officer Babington caught up with Officer Cruz, and the group walked back to the building entrance for Officer Cruz to write the ticket. Officer McBride approached § 87(2)(b) and talked to him in order to calm him down. Officer McBride, who is black, told § 87(2)(b) during this conversation that he himself was often stopped by the police when he was not on duty. During this time, Officer Cruz and § 87(2)(b) argued, but § 87(2)(b) did not hear what they said.

At some point, § 87(2)(b) took out his cell phone to take a picture of Officer Cruz’s badge. Officer Cruz stated, “Put it away,” and reached out to grab it. § 87(2)(b) protested, and Officer Cruz stated, “I can take his phone if I want to,” and, “I’ll break your phone if you try to take a picture.” § 87(2)(b) closed the phone, and § 87(2)(b) told him to calm down.

§ 87(2)(b) received a summons and the brothers left without further incident.

§ 87(2)(b) could only recall one witness to the incident, a black woman who was entering the building as § 87(2)(b) and § 87(2)(b) left the building. She was about 5’4” and wearing a large coat, and did not stay to watch what happened.

## **Results of Investigation**

### ***Civilian Statements***

§ 87(2)(b) provided a phone statement to the CCRB along with § 87(2)(b) (enc. 7C), and was interviewed at the CCRB on 2/22/2005 (enc. 8A-E). § 87(2)(g)

§ 87(2)(b) described Officer Cruz as a 6’0” white male, Officer Babington as a 6’4” white male and Officer McBride as a black male.

§ 87(2)(b) stated that, after the officers stopped he and his brother, Officer Cruz patted him down after asking him a few questions. § 87(2)(b) did not see what happened to § 87(2)(b) during this time. After the pat-down, § 87(2)(b) asked, “What did you stop us for,” and Officer Cruz answered, “Trespassing.”

While Officer Babington went upstairs to verify their story, § 87(2)(b) stated, “This would never happen in any other neighborhood,” and Officer Cruz replied that the neighborhood was drug prone and people were known to carry guns. § 87(2)(b) replied, “Are you going to give me money to get out of this neighborhood?” and Officer Cruz said, “No.” At one point, § 87(2)(b) asked for his ID back, and Officer Cruz told him to wait for Officer Babington.

After Officer Babington verified the story and returned, § 87(2)(b) asked for his ID back, and Officer Cruz stated that he would write down the information, “For my own personal reasons.” After § 87(2)(b) objected, Officer Cruz mentioned a “2-[something]” and stated, “I can do this because it’s a drug prone neighborhood.” Officer Cruz also asked for § 87(2)(b)'s telephone number. § 87(2)(b) and § 87(2)(b)

became angry, because they believed the officers did not have the right to record their personal information in such a manner.

After Officer Cruz finished writing the information and allowed them to go, § 87(2)(b) said, “Suck my dick,” while § 87(2)(b) said, “Forget this fucking shit.”

When Officer Cruz ran out of the building and caught up with the brothers, he told § 87(2)(b) “You said ‘suck my dick,’ you’re getting a summons for speech.” § 87(2)(b) stated only that § 87(2)(b) became angry at this point, and did not state that § 87(2)(b) cursed.

On 2/22/2005, the undersigned offered mediation to § 87(2)(b) with § 87(2)(b) and § 87(2)(b) present and participating in the discussion (enc. 10A-B). § 87(2)(b)

### *Police Officer Statements*

**Officer Cruz** of PSA2 is a 5’10” Hispanic male with light skin. Officer Cruz issued § 87(2)(b) a summons for § 87(2)(b) on 2/10/2005 (enc. 11A). In a late entry on his memobook flysheet, Officer Cruz noted that he had issued the summons to § 87(2)(b) and wrote, “Def’t. stated ‘Suck my dick.’” (enc. 13D)

Officer Cruz filled out a UF250 pertaining to the stop of § 87(2)(b) on 2/10/2005 (enc. 12A), in which he stated § 87(2)(b) was stopped on suspicion of Criminal Trespassing. In the section of the UF250 asking, “What Were Circumstances Which Led to Stop?” Officer Cruz checked the “Other” box and wrote in, “Hanging out in lobby.” In the section of the UF250 asking, “Were other persons stopped/questioned/frisked?” Officer Cruz checked, “No.” He also noted that § 87(2)(b) was not frisked or searched, and noted that the area has a high incidence of Criminal Trespassing.

Officer Cruz was interviewed at the CCRB on 4/20/2005 § 87(2)(g)

Officer Cruz was interviewed at the CCRB for the second time on 8/23/2005 (enc. 15A-C).

On 2/10/2005, Officer Cruz worked in uniform from 6:00 PM to 2:35 AM assigned to a footpost with Officer McBride and Officer Babington. At approximately 11:30 PM, the officers entered § 87(2)(b) to begin a routine vertical patrol, when § 87(2)(b) and § 87(2)(b) came down the stairs, shouting and making a lot of noise, and entered the lobby. The officers stopped the young men to see whether they lived in the building, because there is a high incidence of Criminal Trespassing by drug users in § 87(2)(b)

When asked whether, aside from their location, he had any reason for suspecting the young men of using drugs or trespassing, Officer Cruz mentioned their volume level. When asked whether anything specific about the noise caused him to suspect the young men of a crime, Officer Cruz stated, “No.” Officer Cruz then stated upon further questioning that the volume level did not cause him to suspect the brothers of criminal trespassing.

Officer Cruz acted as “contact person” and asked § 87(2)(b) for ID. The officers explained that there was a high incidence of criminal trespassing in the building, and they wanted to verify that the brothers had a legitimate purpose there.

Officer Cruz noticed a bulge hanging slightly in § 87(2)(b) right jacket pocket, which he thought might have been a weapon, most likely a gun. He patted the pocket and felt a hard plastic bottle. § 87(2)(b) then pulled the bottle out of his pocket and showed it to Officer Cruz; it was half full. Officer Cruz never reached into the pocket and never patted § 87(2)(b) anywhere else; this was the only time he touched § 87(2)(b) during the whole incident. Officer Cruz did not see Officer Babington frisk or search § 87(2)(b). When asked why he did not note the bulge on the UF250 section “What were circumstances that led to stop?” Officer Cruz stated that he had only *stopped* § 87(2)(b) on suspicion of trespassing.

Officer Babington went upstairs to verify the men’s story, and when he returned, both officers filled out UF250s. Up to this point, the young men were both compliant and cordial.

An officer told the men that they were free to go by saying “All right guys, have a good evening,” and, without ever beginning to leave, § 87(2)(b) became extremely upset and began yelling “fuck you,” “suck my dick” and that he was being harassed for being black. Officer Cruz specifically remembered § 87(2)(b) stating the phrases “Suck my dick,” “Go fuck yourself” and “fuck you” two or three times. The cursing was directed only at the officers, and lasted about two or three minutes. When asked to confirm that stating the aforementioned phrases two or three times took § 87(2)(b) two or three minutes, Officer Cruz stated that it was roughly that amount of time, and that he was not a “time expert.”

Officer Cruz recalled one or two people stopping for the duration of the cursing to see what was happening, and recalled seeing one or two people look out the windows of § 87(2)(b) including an elderly woman on the § 87(2)(b) floor.

§ 87(2)(b) remained quiet and never tired to intervene in the situation.

Officer Cruz stated that he warned § 87(2)(b) that he would receive a summons for disorderly conduct, and he replied, “I don’t give a fuck” and continued yelling. Officer Cruz also stated that he decided to give § 87(2)(b) a summons after the second time he said, “Suck my dick” and “Go fuck yourself.” When asked why he decided to issue the summons, Officer Cruz noted the late hour, the fact that people were stopping and looking out of their windows, and the obscene language used by § 87(2)(b). He added that the people walking by the scene did not have to be subject to such language, although officers are expected to have a thicker skin. He decided to issue the summons pertaining to the subsection for “unreasonable noise” because § 87(2)(b) was “creating a scene.”

Officer Cruz told § 87(2)(b) “Just remember when you make your complaint that you told me to suck my dick and go fuck myself, everybody started to come out and you started to make a scene.”

Officer Cruz issued the summons and the stop concluded without incident. Nobody ever took out a phone, and Officer Cruz did not threaten to break anybody’s phone. The men walked away eastbound on Georgia Avenue, with § 87(2)(b) continuing to yell. Officer Cruz did not recall Officer McBride calming down § 87(2)(b).

**Officer Babington** is a 6’4” white male. Officer Babington noted in his memobook that he filled out the UF250 for § 87(2)(b) (enc. 16B), and claimed in his CCRB interview to have filled out the UF250 (enc. 17B-C), but two separate records requests to PSA2 were returned with a note that no such UF250 was on file (enc. 24A-B).

Officer Babington was interviewed at the CCRB on 4/20/2005 (enc. 17A-C). § 87(2)(g)

When asked whether the noise influenced his decision to stop the young men, Officer Babington initially stated, “Not really,” and then stated, “No” upon further questioning. He stated that there were no additional factors aside from the brothers’ location that caused him to stop them.

Officer Babington never suspected § 87(2)(b) of having a weapon and never frisked him or reached into his pockets. Officer Babington saw Officer Cruz pat a bulge on § 87(2)(b) but could not remember the shape or size. After seeing him pat the bulge, he looked away and did not see anything else.

Officer Babington stated that, once the brothers stated that they were visiting someone in the building, he did not even need their IDs, because he only had to confirm their story.

Officer Babington stated that the young men were cordial during the initial stop. § 87(2)(b) was a “gentleman.” He added that, as he was filling out the UF250 for § 87(2)(b) he explained that to § 87(2)(b) that he did not have to give his information if he did not want to.

After the men had just walked out of the lobby, § 87(2)(b) turned around and stated to Officer Cruz, “I’m tired of this shit, suck my dick.” He then began loudly yelling that the stop had been without cause, that the police were always harassing people, and “things we always hear.” He was also “flailing his arms,” more specifically, gesturing with his hands as one does in a heated argument. He continued cursing for more than two minutes.

When further questioned, Officer Babington stated that he could not *specifically* remember anything § 87(2)(b) had said, aside from the initial statement that got his attention, “Suck my dick.” Officer Babington felt that this statement was uncalled for because the officers had treated the men as gentlemen during the stop.

§ 87(2)(b) volume caused four black males to come out of the building across the street and watch the scene until the incident was over. Officer Babington could not recall the appearance of these men. A few people, possibly two, leaned out of the windows of the building. One of them was an older black female, while another was also a black female.

After Officer Cruz issued the summons, the officers walked away westbound, and Officer Babington asked Officer Cruz, “You see something?” Officer Cruz said, “Yeah, I saw a bulge. I patted it, it was a bottle.”

**Officer Edwin McBride** is 5’11” black male. He was interviewed at the CCRB on 9/14/2005 (enc. 19A-B). § 87(2)(g)

Officer McBride stated that the stop “just happened” and did not recall who was the first officer to speak to the brothers. Aside from the noise the brothers were making, the officers stopped them because the building was a drug prone location. Officer McBride did not observe other factors that perked his suspicion.

The brothers were hostile and upset that they had been stopped, and stated that they were stopped frequently. Officer McBride stated that he could not recall whether they were immediately upset, but that they probably were immediately upset and then became even more upset as the stop continued. Officer McBride recalled that the men objected at some point as to why they had to provide their IDs for the UF250s, but he could not recall this moment more specifically. He believed that the officers did succeed in obtaining the information.

Officer McBride recalled that § 87(2)(b) began screaming and cursing as the brothers left the lobby. Officer McBride could not recall whether § 87(2)(b) made more than one statement at this moment or how long he had been cursing.

As Officer Cruz issued the summons to § 87(2)(b) Officer McBride saw that § 87(2)(b) was upset, and talked to him to make to make sure that he walked away knowing why he had been stopped. § 87(2)(b) seemed to understand somewhat, but was still upset.

When questioned about whether § 87(2)(b) was cursing, how loud § 87(2)(b) was cursing and whether he attracted a crowd, whether the officers frisked or searched either young man, whether there was any conflict over a cell phone, and other issues, Officer McBride stated that he did not recall these aspects of the incident.

### ***Police Documents***

The PSA2 Stop and Frisk Index contained no record of a UF250 filed for § 87(2)(b) (enc. 20A-D).

### ***Disposition of Summons***

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### ***Complainant CCRB History***

§ 87(2)(b) and § 87(2)(b) have not filed any other complaints with the CCRB (enc. 6A-C).

### ***Officer CCRB History***

During their two-year tenures, neither Officer Cruz nor Officer Babington nor Officer McBride have been the subject of any substantiated CCRB allegations (enc. 5A-C).

### ***Criminal Conviction History***

As of July 25, 2005, the NYPD discontinued the CCRB’s direct access to the BADS database. Although the NYPD is fulfilling the CCRB’s request for BADS records, it has refused to provide the CCRB with the arrest histories of CCRB witnesses.

## **Conclusions and Recommendations**

### ***Undisputed Facts***

On 2/10/2005 at approximately 11:30 PM, § 87(2)(b) and § 87(2)(b) finished visiting a friend on the fourth floor of § 87(2)(b) entered the lobby of § 87(2)(b) from the stairwell and were stopped by Officer Cruz, Officer Babington and Officer McBride on suspicion of Criminal Trespassing. Officer Cruz patted § 87(2)(b) clothing.

Officer Babington went upstairs and verified that the men had been visiting their friend, and then returned downstairs. Officer Cruz and Officer Babington filled out UF250s and obtained personal information before the men were told they were free to go. As the brothers left the scene, § 87(2)(b) said, "Suck my dick," and Officer Cruz issued him a summons for § 87(2)(b).

### ***Disputed Facts***

§ 87(2)(b) claimed that Officer Babington frisked him and searched his pockets, while Officer Babington denied these allegations.

Officer Cruz and Officer Babington claimed that Officer Cruz specifically frisked a bulge in § 87(2)(b)'s pocket, and § 87(2)(b) pulled out a soda bottle to show Officer Cruz what the bulge had been. Although he agreed that he had been frisked, § 87(2)(b) did not describe this particular event.

Officer Cruz and Officer Babington stated that the brothers were initially compliant and cordial during the initial stop in the lobby, while Officer McBride and both § 87(2)(b) brothers stated that they were hostile and had objected to providing their information for a UF250. § 87(2)(b) stated that Officer Cruz told him at that time that the brothers could be arrested for Trespassing and for refusing to provide their information.

§ 87(2)(b) and § 87(2)(b) denied that § 87(2)(b) cursed at the officers aside from saying, "Suck my dick," while the officers claimed that § 87(2)(b) continued cursing and also screamed and yelled (although Officer McBride could not describe § 87(2)(b)'s volume or any detail regarding how long he continued yelling.) Officers Babington and Cruz claimed that the cursing drew a few onlookers, while Officer McBride did not recall one way or the other, and the brothers could not recall any witnesses to the incident.

§ 87(2)(b) stated that he began cursing at the officers when Officer Cruz announced that he would issue the summons, while none of the other parties recalled him doing so.

Officer McBride and both § 87(2)(b) brothers stated that Officer McBride spoke with § 87(2)(b) as Officer Cruz issued the summons in order to calm him down, while Officer Babington and Officer Cruz denied any recollection of such an occurrence.

Both § 87(2)(b) brothers claimed that § 87(2)(b) took his phone out to photograph Officer Cruz's badge, prompting Officer Cruz to threaten to break it. None of the officers recalled such an event.

### ***Officer Identification***

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g)  
§ 87(2)(b) claimed that Officer Babington frisked him and searched his pockets during the stop, § 87(2)(g) Officer Cruz, Officer Babington and § 87(2)(b) all agreed that Officer Cruz frisked § 87(2)(b) § 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g) § 87(2)(b) claimed that Officer Cruz told the brothers that they could be arrested for Trespassing and for refusing to provide their information for a UF250, § 87(2)(g)

As Officer Cruz wrote and issued the summons to § 87(2)(b) § 87(2)(g)

As both § 87(2)(b) brothers claimed that Officer Cruz threatened to break § 87(2)(b) phone, § 87(2)(g)

### *Credibility*

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) § 87(2)(b) recalled § 87(2)(b) saying, “Forget this fucking shit,” as the brothers left the building, while § 87(2)(b) denied cursing at that point. § 87(2)(g)

§ 87(2)(g)

### *Note on the Pleading of Allegations*

Although no UF250 for § 87(2)(b) could be found (enc. 24A-B), Officer Babington documented the stop and UF250 in his memobook entry for that day (enc. 16B). § 87(2)(g)



***Allegation A, Abuse of Authority: Officer Carlos Cruz stopped and questioned § 87(2)(b) and § 87(2)(b)***

***Allegation B, Abuse of Authority: Officer Edward Babington stopped and questioned § 87(2)(b) and § 87(2)(b)***

***Allegation C, Abuse of Authority: Officer Edwin McBride stopped and questioned § 87(2)(b) and § 87(2)(b)***

According to Barry Kamins' *New York Search and Seizure*, managers of a public housing authority can exclude unwanted members of the public from hallways and stairwells of public housing buildings in New York State. However, court decisions have established that the lobby area is still open to the public, and individuals found in the lobby "would still seem immune from a charge of trespass." Kamins notes that a request for information to an individual in a public area of a housing building "must be based upon some factor *in addition* to the 'no trespass' signs posted in the front of the building" (enc. 1A-B).

By all accounts, the officers in this case stopped § 87(2)(b) and § 87(2)(b) in the lobby area of the building. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) As noted in the OATH case *PD v. Dowd and Rose*, "an improper search and seizure is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper" (enc. 2B). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

***Allegation D, Abuse of Authority: Officer Edward Babington frisked § 87(2)(b)***

***Allegation E, Abuse of Authority: Officer Edward Babington searched § 87(2)(b)***

According to Section 140.50(3) of New York State's Criminal Procedure Law, as quoted by Kamins, an officer may conduct a frisk for a weapon when he "reasonably suspects that he is in danger of physical injury." An officer cannot search a suspect for a weapon if the officer does not first feel anything resembling a weapon during the frisk (enc. 1C-D).

§ 87(2)(g)

§ 87(2)(b) stated that Officer Babington reached into his pockets after feeling objects during the pat-down, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

***Allegation F, Abuse of Authority: Officer Carlos Cruz frisked § 87(2)(b)***

According to Section 140.50(3) of New York State’s Criminal Procedure Law, as quoted by Kamins, an officer may conduct a frisk for a weapon when he “reasonably suspects that he is in danger of physical injury.” (enc. 1C)

§ 87(2)(b) Officer Babington and Officer Cruz agreed that Officer Cruz frisked § 87(2)(b). However, § 87(2)(b) did not corroborate Officer Cruz’s specific story that he saw a bulge that may have been a weapon, frisked it, and determined that it was a bottle, at which point § 87(2)(b) took out the bottle.

§ 87(2)(g)

***Allegation G, Abuse of Authority: Officer Carlos Cruz threatened to arrest § 87(2)(b)***

§ 87(2)(b) alleged that when he protested that the officers were writing down his information, Officer Cruz threatened to arrest him, and provided two different rationales: “We could arrest you for trespassing,” and also stated, “We could lock you up for refusing to provide your information.”

At this point in the encounter, Officer Babington had already verified that § 87(2)(b) had a legitimate purpose in being in the building. § 87(2)(g) Patrol Guide Procedure 212-11 instructs officers to simply “check off ‘Refused’” in the appropriate section of the UF250 if a suspect refuses to provide their information and there is no probable cause to arrest them (enc. 4A). § 87(2)(g)

§ 87(2)(g)

***Allegation H, Abuse of Authority: Officer Carlos Cruz issued a summons to § 87(2)(b)***

Section 240.20 of the New York State Penal Law states, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof.... 2. He makes unreasonable noise; or 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture.” (enc. 4B, only the subsections relevant to this case are cited here.)

As noted in the OATH case *PD v. Zabawski*, “the purpose of the intent requirement is to distinguish public disputes from private disputes.” *PD v. Zabawski* also notes that “Courts have refused to uphold disorderly conduct convictions based purely on speech.” (enc. 3A-C)

According to the § 87(2)(b) brothers, Officer Cruz issued the summons to § 87(2)(b) specifically for saying the single phrase, “Suck my dick.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

***Allegation I, Abuse of Authority: Officer Carlos Cruz threatened to damage/seize § 87(2)(b) property.***

§ 87(2)(b) and § 87(2)(b) both alleged that Officer Cruz threatened to break § 87(2)(b)'s phone after § 87(2)(b) took it out in order to photograph Officer Cruz's badge. § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: